A

ASSAN MOHAMAD & ORS

v.

HOCK HUAT CHAN SDN BHD

B

COURT OF APPEAL, PUTRAJAYA
ABU SAMAH NORDIN JCA
HISHAMUDIN MOHD YUNUS JCA
AZIAH ALI JCA
[CIVIL APPEAL NO: Q-01-62-2008]

C

22 APRIL 2013

CUSTOMS AND EXCISE: *Declaration - False declaration - Customs department - Seizure and forfeiture of respondent's goods - Whether forfeiture unlawful - Whether respondent given opportunity to be heard*

D

before goods were seized - Whether customs department under a legal duty to notify respondents that goods would be liable to forfeiture - Whether forfeiture notice mandatory - Failure to exercise rights - Whether respondent made claim towards seized goods within prescribed period - Customs Act 1967, ss. 114 & 128

E

CIVIL PROCEDURE: *Appeal - Appeal against decision of High Court - Unlawful forfeiture of respondent's goods - Customs department - Whether respondent's complaint was against legality of seizure - Whether trial judge should have confined his decision based on respondent's pleading*

F

- Customs Act 1967, ss. 114 & 128

STATUTORY INTERPRETATION: *Interpretation of Acts - Intention of legislature - Principles of natural justice - Whether there was a legal duty on Customs Department to notify owner that goods would be liable to forfeiture - Whether implicit in s. 114 Customs Act 1967 by*

G

reason of art. 13 Federal Constitution - Whether owner of seized goods must make a claim within one month of seizure if there is no prosecution - Customs Act 1967, s. 128 - Whether statutory provisions contrary to rules of natural justice

H

The first appellant was an enforcement officer attached to the Department of Customs, Kuching. The Customs Department had seized the respondent's goods since the respondent had falsely declared that it was importing "temukut" (broken rice) for which it had a licence but in actual fact, it was importing normal rice for

I

which it had no licence. From the standpoint of the Customs Department, the respondent had committed an offence under s. 133(1)(a) of the Customs Act 1967 ('Customs Act'), for giving

false declaration in respect of goods to be imported. No prosecution was carried out in relation to the seized goods. As required under s. 114(3) of the Customs Act, a notice of seizure was issued to the respondent. However, the respondent did not make any claim to the seized goods pursuant to s. 128(1) and (2) of the Customs Act by giving a written notice to the Customs Department asserting, *inter alia*, that it was the owner of the goods and that the goods were not liable to forfeiture. Subsequently, the forfeited goods were sold by the Customs Department to BERNAS. Dissatisfied, the respondent filed an action against the appellants for unlawful seizure of its goods and claimed for damages. The complaint was on the grounds that the respondent was not given an opportunity to be heard before the seizures were carried out. The High Court Judge found the seizures to be lawful but went on to hold that the forfeiture was unlawful and ordered that the respondent's claim of ownership over the goods to be referred to a Magistrate's Court pursuant to s. 128(4) of the Customs Act. In arriving at this decision, the High Court Judge decided that (i) the Customs Department was under a legal duty to notify the respondents that the goods would be liable to forfeiture; and (ii) the forfeiture notice was mandatory as it was not reasonable to expect the respondent to know its rights under s. 128 of the Customs Act. Hence, this appeal by the appellants.

Held (allowing appeal with costs)
Per Hishamudin Mohd Yunus JCA delivering the judgment of the court:

(1) Our legal system operates on the principle that the members of the public must be deemed to know the law. The respondent did not make any claim to the seized goods within the prescribed one-month period, the period as stipulated by s. 128(1)(a) and (2) of the Customs Act. In such a situation, the Customs Act provides for automatic forfeitures. The said Act provides that the seized goods shall be taken and deemed to be forfeited at the expiration of one calendar month. There was nothing else for the Customs Department to do except to treat the goods as forfeited goods and to deal with them accordingly. (paras 18 & 28)

(2) The complaint of the respondent was against the legality of the seizures of the goods and was not against the legality of the forfeitures. The learned trial judge should have confined his decision based on the respondent's pleading and the issues raised by the parties before him. (para 29)

(3) The trial judge was aware that there was no express provision in the Customs Act imposing a legal duty on the Customs Department to notify the respondent that the goods would be liable to forfeiture under s. 128 of the Customs Act. Be that as it may, the trial judge was of the opinion that such a duty was, nevertheless, implicit in s. 114 of the Customs Act by reason of art. 13 of the Federal Constitution and the principles of natural justice. However, considering the provisions of the Customs Act, it is not legitimate to interpret s. 114 of the Customs Act in the manner as adopted by the learned trial judge. There was no unfairness in the statutory provisions of the Customs Act, nor are the statutory provisions contrary to the rules of natural justice. Sections 114 and 128 of the Customs Act give the owner of the seized goods the opportunity to make a claim within one month of the seizure, if there is no prosecution. On the facts, the respondent was aware of the seizures but it did not serve any notice on the Customs Department pursuant to s. 128 of the Customs Act to claim those seized goods. If it failed to exercise its rights accorded to it by s. 128, then it had only itself to blame. (paras 19 & 26)

Bahasa Malaysia *Translation Of Headnotes*

Perayu pertama adalah pegawai penguatkuasa yang bertugas di Jabatan Kastam, Kuching. Jabatan Kastam telah menyita barangan responden kerana responden telah, secara palsu, mengisytiharkan bahawa ia sedang mengimport temukut (beras pecah) di mana ia mempunyai lesen tetapi sebenarnya, ia mengimport beras biasa dan tidak mempunyai lesen baginya. Dari sudut pandangan Jabatan Kastam, responden telah melakukan satu kesalahan di bawah s. 133(1)(a) Akta Kastam 1967 ('Akta Kastam'), kerana memberi pengisytiharan palsu berkenaan barangan yang diimport. Tiada pendakwaan diambil berkenaan barangan yang disita itu. Seperti diperuntukkan di bawah s. 114(3) Akta Kastam, satu notis penyitaan dikeluarkan terhadap responden. Walau bagaimanapun,

responden tidak membuat sebarang tuntutan terhadap barangan yang disita itu, menurut s. 128(1) dan (2) Akta Kastam, dengan memberi notis bertulis kepada Jabatan Kastam menyatakan, antara lain, bahawa ia adalah pemilik barangan itu dan barangan itu tidak boleh dilucut hak. Barangan yang dirampas itu kemudian telah dijual oleh Jabatan Kastam kepada BERNAS. Tidak puas hati, responden telah memfailkan tindakan terhadap pihak perayu untuk penyitaan tak sah barangannya dan menuntut ganti rugi. Aduan adalah atas alasan bahawa responden tidak diberi peluang untuk didengar sebelum penyitaan tersebut dibuat. Hakim Mahkamah Tinggi mendapati bahawa penyitaan dibuat secara sah tetapi barangan yang dilucut hak itu dibuat secara tidak sah dan memerintahkan agar tuntutan responden terhadap hakmilik dirujuk ke Mahkamah Majistret berikutan s. 128(4) Akta Kastam. Dalam mencapai keputusan itu, Hakim Mahkamah Tinggi memutuskan bahawa (i) Jabatan Kastam mempunyai kewajipan undang-undang untuk memaklumkan kepada responden bahawa barangan itu akan dilucut hak; dan (ii) notis melucut hak adalah mandatori memandangkan ia tidak munasabah untuk mengharapkan responden untuk mengetahui haknya di bawah s. 128 Akta Kastam. Oleh itu, rayuan ini oleh pihak perayu.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Hishamudin Mohd Yunus HMR menyampaikan penghakiman mahkamah:

(1) Sistem perundangan kita beroperasi atas prinsip bahawa orang awam dianggap harus mengetahui undang-undang. Responden tidak membuat sebarang tuntutan terhadap barangan yang disita dalam jangka masa satu bulan, tempoh masa yang diperuntukkan di bawah s. 128(1)(a) dan (2) Akta Kastam. Dalam keadaan ini, Akta Kastam membenarkan pelucutan hak secara automatik. Akta tersebut memperuntukkan bahawa barangan yang disita akan diambil dan dilucut hak apabila luputnya satu bulan kalendar. Tiada apa-apa lagi yang perlu dibuat oleh Jabatan Kastam kecuali untuk menganggap barangan itu sebagai dilucut hak dan mengendalikannya secara berpatutan.

(2) Aduan responden adalah terhadap kesahan barangan yang disita dan bukannya terhadap kesahan pelucutan hak. Yang arif hakim sepatutnya membataskan keputusan beliau berdasarkan pliding responden dan isu-isu yang dibangkitkan oleh pihak-pihak.

(3) Hakim bicara sedar bahawa tiada peruntukan nyata dalam Akta Kastam yang mengenakan kewajipan undang-undang atas Jabatan Kastam untuk memaklumkan kepada responden bahawa barangan itu akan dilucut hak di bawah s. 128 Akta Kastam. Walaupun begitu, hakim bicara berpendapat bahawa kewajipan sebegitu adalah tersirat dalam s. 114 Akta Kastam disebabkan fasal 13 Perlembagaan Persekutuan dan prinsip-prinsip hak asasi. Walau bagaimanapun, dengan mempertimbangkan peruntukan Akta Kastam, ia adalah tidak sah untuk mentafsirkan s. 114 Akta Kastam dalam cara yang dibuat oleh hakim bicara. Tiada ketidakadilan dalam peruntukan statutori Akta Kastam, dan peruntukan statutori itu tidaklah bertentangan dengan peraturan-peraturan hak asasi. Seksyen-seksyen 114 dan 128 Akta Kastam memberi peluang kepada pemilik barangan yang disita itu untuk membuat tuntutan dalam tempoh satu bulan dari penyitaan itu, jika tiada pendakwaan. Berdasarkan fakta, responden sedar akan penyitaan itu tetapi tidak menyerahkan notis kepada Jabatan Kastam berikutan s. 128 Akta Kastam, untuk menuntut barangan yang disita itu. Jika ia gagal untuk melaksanakan haknya di bawah s. 128, maka hanya ia sendiri yang sepatutnya dipersalahkan.

Case(s) referred to:

Ong Ah Chuan v. PP & Koh Chai Cheng v. PP [1980] 1 LNS 181 PC ***(refd)***

S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC ***(refd)***

Legislation referred to:

Customs Act 1967, ss. 114(3), 128(1)(a), (2), (4), 133(1)(a), 135(1)(a)
Federal Constitution, art. 13

For the appellants - Nik Suhaimi Nik Sulaiman; SFC
For the respondent - Baru Bian; M/s The Law Office of Baru Bian

[Appeal from High Court, Kuching; Civil Suit No: 22-21-2003-111(1)]

Reported by Kumitha Abd Majid

JUDGMENT

Hishamudin Mohd Yunus JCA:

Introduction

[1] This is an appeal by the appellants against the decision of the High Court of Kuching of 7 March 2008 given in favour of the respondent.

The Order Of The High Court That Is Being Appealed

[2] On 7 March 2008, the learned judge of the High Court of Kuching, at the conclusion of the trial of the respondent's (the plaintiff at the High Court) writ action against the appellants (the defendants at the High Court), ordered that the respondent's claim of 'ownership' over certain goods seized and forfeited by the Customs Department of Kuching be referred to a Magistrate's Court pursuant to s. 128(4) of the Customs Act 1967.

The Decision Of This Court

[3] On 18 October 2011, by a unanimous decision, we allowed the appellants' appeal with costs.

[4] We now give our grounds.

The Facts Of The Case

[5] The first appellant is an enforcement officer attached to the Department of Customs, Kuching.

[6] The officers of the Customs Department of Kuching had seized goods (21 containers containing rice) belonging to the respondent on four occasions, namely, on 20 November 2001 (the first seizure), on 27 March 2002 (the second seizure), on 2 April 2002 (the third seizure), and 15 May 2002 (the fourth seizure). The seizures took place at the Kuching Port. The reason for the seizures is that the respondent, in importing the goods, had falsely declared that it was importing temukut (broken rice) for which it had a licence; when in actual fact it was importing normal rice for which it had no licence. From the standpoint of the Customs Department, the respondent had committed an offence under s. 133(1)(a) (the offence of false declaration in respect of goods to be imported) of the Customs Act 1967 and punishable under s. 135(1)(a) of the same Act.

[7] For the first seizure, a notice of seizure was issued to the agent of the respondent, namely, one Mr Chua Hong Kim, as required by s. 114(3) of the Customs Act 1967. For the second, third and fourth seizures, no notice of seizure was issued as the seizures were done in the presence of the said Mr Chua, an agent of the respondent, and as such the requirement as to notice is exempted by the proviso to sub-s. (3) of s. 114.

[8] Section 114(3) of the Customs Act 1967 provides:

Seizure of goods the subject of an offence

(1) All goods in respect of which there has been, or there is, reasonable cause to suspect that there has been committed any offence against this Act or any regulation made thereunder, or any breach of any of the provisions of this Act or of any regulation made thereunder or of any restriction or condition subject to or upon which any licence or permit has been granted, together with any receptacle, package, conveyance, vessel not exceeding two hundred tons nett registered tonnage, or aircraft other than an aircraft engaged in international carriage, in which the same may have been found or which has been used in connection with such offence or breach, and any books or documents which may reasonably be believed to have a bearing on the case, may be seized by any officer of customs in any place either on land or in territorial waters.

(2) All such goods and such receptacles, packages, conveyances, vessels or aircraft shall, as soon as conveniently may be, be delivered into the care of a proper officer of customs whose duty it is to receive the same.

(3) Whenever any goods, conveyances, vessels or aircraft are seized under this Act, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of such goods, if known, either by delivering such notice to him personally or by post at his place of abode, if known:

Provided that such notice shall not be required to be given where such seizure is made on the person, or in the presence of the offender or the owner or his agent, or in the case of a vessel or an aircraft, in the presence of the master or pilot, as the case may be.

[9] In the present case, there were no prosecutions carried out with regard to the goods seized. A

[10] Now, s. 128 of the Customs Act 1967 provides as to what will happen to the seized goods when there is no prosecution:

Goods seized or in respect of which there is no prosecution, or the proceeds of sale thereof, are forfeited if not claimed within one month B

128. (1) If there be no prosecution with regard to any goods seized under this Act, such goods or the proceeds of sale of such goods which are held pursuant to paragraph 115(1)(c) shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure of the goods unless, before such expiration: C

(a) a claim to such goods or the proceeds of sale of such goods is made under subsection (2); D

(b) a written application is made for the return of such goods under paragraph 115(1)(a) or (b); or

(c) such goods are returned under the said paragraph (a) or (b). E

(2) Any person asserting that he is the owner of such goods or the proceeds of sale of such goods, as the case may be, and that they are not liable to forfeiture may give written notice to a senior officer of customs that he claims the same. F

(3) On the expiration of the period mentioned in subsection (1), or, if a decision is made earlier that there be no prosecution with regard to the goods, on the making of the decision the senior officer of customs shall, if such goods or the proceeds of sale of such goods are not taken and deemed to be forfeited under that subsection, refer the claim to the Director General who may direct that such goods or the proceeds of sale of such goods or the security furnished under paragraph 115(1)(a) or (b), as the case may be, be released, or may direct such senior officer of customs, by information in the prescribed form, to refer the matter to a Magistrate of the First Class for his decision. G H I

A (4) The Magistrate of the First Class shall issue a summons requiring the person asserting that he is the owner of the goods or the proceeds of sale of such goods, and the person from whom the goods were seized, to appear before him, and upon their appearance or default to
B appear, due service of such summons being proved, the Magistrate of the First Class shall proceed to the examination of the matter, and upon proof that an offence against this Act or any regulations made thereunder has been committed and that such goods were the subject matter, or were used in the commission, of
C such offence, shall order such goods or the proceeds of sale of such goods or the amount secured under paragraph 115(1)(a) or (b), as the case may be, to be forfeited, or in the absence of such proof, may order the release of such goods or the proceeds of sale of such goods or the security furnished under paragraph 115(1)(a)
D or (b), as the case may be.

(5) In any proceedings under subsection (4), section 119 shall apply to the person asserting that he is the owner of the goods and to the person from whom they were
E seized as if such owner or person had been the defendant in a prosecution under this Act.

[11] The respondent did not make any claim to the seized goods pursuant to s. 128(1) and (2) of the Customs Act 1967 by giving written notice to the Customs Department asserting:
F

(a) that it was the owner of the goods;

(b) that the goods were not liable to forfeiture; and

(c) that it was claiming the same.
G

[12] Subsequently, the forfeited goods were sold by the Customs Department to BERNAS.

The Respondent's/Plaintiff's Writ Action

H **[13]** The respondent in its writ action sued the appellants for unlawful seizure of its goods and claimed for damages. The complaint was on the grounds that the respondent was not given an opportunity to be heard before the seizures were carried out.

I

The Decision Of The High Court

[14] The learned High Court Judge, at the conclusion of the trial, however, found the seizures to be lawful. In his grounds of judgment, the learned judge rules:

> Accordingly I find that the seizure was legally carried.

[15] There is no cross appeal by the respondent against this significant finding by the learned High Court Judge. Hence, the legality of the seizures is not in issue in this appeal.

[16] However, the learned High Court Judge, having ruled the seizures to be lawful, nevertheless, goes on to hold that the forfeitures of the seized goods to be unlawful; and having held that the forfeitures were unlawful ordered that the respondent's claim of 'ownership over the goods' be referred to a Magistrate's Court pursuant to s. 128(4) of the Customs Act 1967.

The Grounds For Our Decision

[17] In our judgment, the appeal must be allowed. With respect, we disagree with the views of the learned High Court Judge on the issue of forfeitures. We do not see any contravention of the Customs Act 1967 by the officers of the Customs Department with regard to the forfeitures of the goods.

[18] In the present case, it is not disputed that the owner of the goods, that is to say, the respondent did not make any claim to the seized goods within the prescribed one-month period, the period as stipulated by s. 128(1)(a) and (2) of the Customs Act 1967. In such a situation, the Customs Act provides for automatic forfeitures. The Customs Act 1967 provides that the seized goods 'shall be taken and deemed to be forfeited at the expiration of one calendar month'. There is nothing else for the Customs Department to do except to treat the goods as forfeited goods, and to deal with them accordingly.

[19] In ruling that the forfeitures were unlawful, the learned High Court Judge takes the view that the Customs Department was under a legal duty to notify the owner of the goods (and in the present case, the respondent) that the goods would be liable to forfeiture under s. 128 of the Customs Act 1967 if there were no prosecution made in respect of the seized goods, unless a claim is

made within one month from the date of the seizure by the owner of the goods for the return of the goods to him/it. The learned trial judge is, however, aware that there is no express provision in the Customs Act imposing such a duty on the Customs Department. Be that as it may, the learned trial judge is of the opinion that such a duty is, nevertheless, implicit in s. 114 of the Customs Act 1967 by reason of art. 13 of the Federal Constitution and the principles of natural justice, citing the following passage in the judgment of Lord Diplock in the Privy Council case of *Ong Ah Chuan v. PP & Koh Chai Cheng v. PP* [1980] 1 LNS 181; [1981] 1 MLJ 64 (an appeal to the Privy Council from the Court of Criminal Appeal, Singapore) (at p. 71):

> In a constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to "law" in such context as "in accordance with law," "equality before the law," "protection of the law" and the like, in their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution. It would have been taken for granted by the makers of the Constitution that the "law" to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules. If it were otherwise it would be misuse of language to speak of law as something which affords "protection" for the individual in the enjoyment of his fundamental liberties, and the purported entrenchment (by Article 5) of Articles 9(1) and 12(1) would be little better than a mockery.

[20] The learned High Court Judge also refers to the Federal Court case of *S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314; [1982] MLJ 204. In this case cited, at the High Court stage, Hashim Yeop A Sani J (as he then was) approved Lord Diplock's *dictum* in *Ong Ah Chuan* by saying:

> In my view the proper interpretation of the word 'law' is not as in *Comptroller-General of Inland Revenue v. NP* [1973] 1 MLJ 165 which is, with respect, too restrictive, but as interpreted in *Ong Ah Chuan v. Public Prosecutor* [1981] 1 MLJ 64, 71 in the judgment of the Privy Council dealing with the very same words 'in accordance with the law' appearing in a provision of the Singapore Constitution ...

[21] The *dictum* of Lord Diplock in *Ong Ah Chuan* was cited with approval when the case of *S Kulasingam & Anor v. Commissioner of Lands* subsequently went on appeal to the Federal Court. Abdoolcader J (as he then was) in delivering the judgment of the Federal Court (the other two judges on the panel being Syed Othman FJ and Mohamed Azmi J (as he then was)) said (at p. 318 (CLJ); p. 211 (MLJ)):

> We therefore have to consider the connotation of the term 'law' in Article 13(1) which stipulates that no person shall be deprived of property save in accordance with law. Lord Diplock in delivering the judgment of the Privy Council in *Ong Ah Chuan v. Public Prosecutor* said ... 'law' in such context refers to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation at the commencement of the Constitution, referring to that of Singapore but this equally applies to such written constitutions including ours.

[22] Now, art. 13, cl. (1) of the Federal Constitution provides:

> (1) No person shall be deprived of property save in accordance with the law.

[23] Having referred to art. 13 of the Federal Constitution and the cases of *Ong Ah Chuan* and *S Kulasingam & Anor v. Commissioner of Lands* the learned High Court Judge in the present case then goes on to rule:

> So adopting that approach, I hold that there must be read into sec 114 of Customs Act 1967 a requirement on the part of the 2nd defendant or his servants or agents to attach with the notice of seizure a written notice of forfeiture explaining or warning in plain language to the owners of the goods seized that if there is no prosecution in respect of the goods seized, they will be forfeited if there is no written claim for ownership given to the Director of Customs, Sarawak, within one calendar month from the date of seizure.

[24] And, in conclusion, the learned judge rules:

> For all the reasons given above, I find that the seized goods were not properly forfeited and pursuant to prayer (vii) of the statement of claim, I order the plaintiff's claim of ownership of the seized goods be adjudicated before the magistrate court as provided for in sec 128(4) of the Customs Act.

[25] The above passage from the judgment of Lord Diplock in the Privy Council case of *Ong Ah Chuan* (as quoted by the learned High Court Judge) is illuminating and is a valuable contribution to the development of our constitutional law. It serves as a salutary reminder to judges who have a tendency of adopting a restrictive or literal approach when interpreting the Constitution.

[26] However, be that as it may, with respect, we are unable to agree with the reasoning and ruling of the learned High Court Judge in the context of the present case. In our judgment, on the facts of the instant case and considering the provisions of the Customs Act, it is not legitimate to interpret s. 114 of the Customs Act 1967 in the manner as adopted by the learned trial judge. In our view, there is no unfairness in the statutory provisions of the Customs Act; nor are the statutory provisions contrary to the rules of natural justice. There is thus no justification to resort to reliance on the passage (that we have just quoted) of Lord Diplock's judgment in *Ong Ah Chuan*. The statutory scheme in place in the Customs Act is fair and reasonable. Sections 114 and 128 of the Customs Act 1967 give the owner of the seized goods the opportunity to make a claim within one month of the seizure - if there is no prosecution. The respondent was aware of the seizures. But it did not serve any notice on the Customs Department pursuant to s. 128 of the Customs Act 1967 to claim those seized goods. If it failed to exercise its rights accorded to it by s. 128 of the Customs Act 1967 to claim those goods, then it had only itself to be blamed.

[27] The learned trial judge takes the view that the giving of the 'forfeiture notice' (in the manner that he suggests) is mandatory as it is not reasonable to expect the respondent, being an ordinary citizen, to know of its right under s. 128 of the Customs Act 1967. In the words of the learned judge:

> Ordinary citizens of the country must be informed of their rights when it involved an exercise of public power resulting in deprivation of property. As stated earlier, it is unreasonable to assume ordinary citizens of the country to know the law.

[28] With respect, we find no merit in such a view. Our legal system operates on the principle that the members of the public must be deemed to know the law. If we were to do away with this principle, there will be chaos in the administration of justice.

[29] In any event, the complaint of the respondent in the present case is against the legality of the seizures of the goods, as carried out by the Customs Department. The complaint of the respondent in its statement of claim is not against the legality of the forfeitures. The learned trial judge should have confined his decision based on the respondent's pleading and the issues raised by the parties before him; all the more so when the learned trial judge himself acknowledged in his grounds of judgment that the issue about art. 13 of the Federal Constitution and the legality of the forfeitures (as opposed to the legality of the seizures) is neither pleaded nor raised by the parties before him, but is raised by him on his own volition.

[Appeal allowed with costs]